

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE:

B-186290

DATE:

SEP 30 1976

MATTER OF:

DIGEST:

Francis E. Mucklin - Relocation Expenses;
Tax Withholding from Moving Expenses
Reimbursement

1. Claim for attorney's fees in the amount of \$150 may not be authorized for payment where itemization shows services performed included only consultations, conferences, correspondence, review of documents and preparation of income tax rebate forms. Such services are of an advisory or representational nature or relate to the personal income tax liability of the employee. This Office has consistently held that employees may not be reimbursed for expense of representation and counsel by attorney. See Decisions cited.
2. Employee may not be authorized reimbursement for residence loan service charge incident to transfer since Federal Travel Regulations, para. 2-6.2d, prohibits reimbursement of finance charges under Truth in Lending Act, Title I, Public Law 90-321. Regulation 2, 12 CFR 225.4, defines a finance charge as including loan origination or service charges. However, if employee can obtain itemization from bank showing specific amounts of allowable charges included in the loan service fee, employee's entitlement to reimbursement of those charges should be reevaluated under FTR.
3. Claim by employee for refund of sums withheld for taxes from reimbursement for moving expenses in 1975 on basis of Court of Claims ruling in

61673

97950

Allstate Ins. Co. v. United States,
530 F.2d 378 (1976), regarding
reimbursements made from 1965-1969,
may not be authorized for payment.
Tax Reform Act of 1969, Public
Law 91-172, added new section 82 to
the Internal Revenue Code which
provides for inclusion in gross
income of amounts received as
reimbursement for moving expenses.
Holding in Allstate case, therefore,
does not apply to taxable years
after 1969. See Decision cited.

This matter is before us on two requests for decisions from
Ms. Orris C. Huet, Certifying Officer, United States Department
of Agriculture, regarding claims by Mr. Francis E. Mucklin for
reimbursement for certain real estate expenses incident to a trans-
fer and for the refund of sums withheld for taxes from moving
expenses reimbursed in 1975. We will treat these two matters
independently.

The record shows that in December 1974 the Department of
Agriculture authorized a change of official station for Mr. Mucklin
from Hyattsville, Maryland to Chicago, Illinois. In processing
Mr. Mucklin's claim for relocation expenses, the agency audit
section administratively disallowed \$560 of Mr. Mucklin's claim
for reimbursement of real estate expenses incident to the purchase
of a residence at his new duty station. However, when the voucher
was released for payment this amount was not deducted through
error. A bill for collection was issued to Mr. Mucklin in November
1975 to recover the amount of the overpayment. Mr. Mucklin now
disputes the validity of the bill for collection and claims that
he was properly reimbursed the \$560 amount.

The \$560 determined by the audit section to be nonreimburs-
able is comprised of two components: (1) an attorney's fee in
the amount of \$150 originally denied for lack of itemization; and
(2) closing costs in the amount of \$410 determined to be part of
the finance charge assessed by the bank incident to the extension
of Mr. Mucklin's mortgage loan. Mr. Mucklin has now furnished
an itemization of services performed by the attorney for the
\$150 fee, broken down by billable hours of service performed in
each category, and the attorney's hourly rate, together with
additional information concerning the nature of the loan charge
made by the bank.

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The itemized statement prepared by Mr. Mucklin's attorney contains a lengthy list of services performed incident to the residence purchase transaction. The items enumerated include the initial office conference with Mr. Mucklin, review of documents, several telephone conferences, unidentified miscellaneous conferences and correspondence, and preparation of an eligibility certificate for the tax credit on purchase of a new residence authorized under section 208 of Public Law 94-12, approved March 29, 1975, 89 Stat. 32, as amended.

The regulation governing the reimbursement of legal and related expenses incident to residence transaction is set forth in para. 2-6.2c of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). This regulation delineates the type of legal expenses reimbursable as the costs of:

"(1) searching title, preparing abstract, and legal fees for a title opinion or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts and related notary fees and recording fees; costs of making surveys, preparing drawings or plats when required for legal or financial purposes; and similar expenses. Costs of litigation are not reimbursable."

This Office has consistently held that only expenses of the type enumerated in the regulation may be reimbursed and that an employee may not be reimbursed for the expenses of representation and counseling by an attorney. See e.g., 48 Comp. Gen. 469 (1969); B-183037, March 21, 1975; B-183102, June 9, 1976.

It is apparent from the itemization furnished by Mr. Mucklin's attorney that the services he provided were advisory and representational in nature or related to the personal income tax liability of the employee and are not within the class of services contemplated by the cited regulation. We conclude, therefore, that Mr. Mucklin should not have been reimbursed for these services.

The service charge on Mr. Mucklin's real estate loan is reflected in the settlement documents on his residence purchase as a single charge in the amount of \$450, or 1½ percent of the

mortgage amount of \$30,000. By letter dated October 21, 1975, the bank advised that this amount included \$40 for an appraisal, for which reimbursement was authorized by the agency, and that the balance of this charge, \$410, was for "other bank expense." Mr. Mucklin has advised that he was informed by bank officials that the \$410 sum includes normal processing and documentation charges incident to the loan. He indicates further that bank officials informed him that it is not a finance charge as it did not affect or change the mortgage payments or the cost of the home.

Paragraph 2-6.2d of the FTR provides in pertinent part that no fee, charge, cost or expense is reimbursable which is a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z (12 C.F.R. 226.4) issued pursuant thereto. Regulation Z provides in pertinent part that the amount of the finance charge in any transaction is to be determined as the sum of all charges imposed directly or indirectly by the creditor as an incident to or as a condition of extension of credit, including service, transaction, activity, or carrying charges.

On the record before us, we are unable to conclude that the loan charge for which Mr. Mucklin is claiming reimbursement is other than a service charge levied by the bank which constitutes a finance charge under Regulation Z, supra. In these circumstances, the regulations prohibit reimbursement to Mr. Mucklin of the amount claimed.

In view of the foregoing, we are of the opinion that collection should be made of the amount Mr. Mucklin was reimbursed for these items. We note, however, that the service fee charged by the bank may have included charges for preparation of documents, examination of title, and other charges specifically reimbursable under the FTR and excluded from the finance charge under Regulation Z by 12 C.F.R. 226.4(e). If Mr. Mucklin is able to obtain a more detailed statement of the services performed by the bank and the specific charges therefor, his entitlement to reimbursement of these charges should be reevaluated under the criteria of FTR, para. 2-6.2. See B-156113, December 4, 1974.

Mr. Mucklin also seeks refund of \$897.47 withheld for Federal and state taxes from the amount of his reimbursement for moving

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expenses on the basis of the recent decision of the United States Court of Claims in the case of Allstate Insurance Company v. United States, 530 F.2d 378 (1976), concerning reimbursements for moving expenses made in the years 1965 through 1969. However, the Tax Reform Act of 1969, Pub. L. 91-172, December 30, 1969, 83 Stat. 487, 577-580 enacted a new section 82 to the Internal Revenue Code, 26 U.S.C. 82 (1970), which provides for the inclusion in an individual's gross income of any reimbursement or payment received for moving expenses incident to employment. This provision is effective for taxable years after December 31, 1969, and effectively negates the applicability of the holding in the cited case to these years. See B-187136, also of this date.

We are of the opinion, therefore, that Mr. Mucklin's claim for refund of taxes withheld from his reimbursement for moving expenses in 1975 is without merit and may not be authorized for payment.

R.F. KELLER

Deputy Comptroller General
of the United States